REMARKS

Office action summary

Claims 1-30 are pending in the present application. No claims are presently amended, added, or canceled. The following rejections were made in the office action of August 3, 2010 ("Office Action"):

- Claims 1-5, 7-21, and 23-30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Farrington, US Patent 4,941,011 ("Farrington"), in view of Yamada, US 2002/0090145 A1 ("Yamada").
- Claims 6 and 22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Farrington in view of Yamada, and further in view of Omura, US Patent 5,943,515 ("Omura").

The rejections are discussed below. The examiner is respectfully urged to reconsider the application and withdraw the rejections. Should the examiner have any questions or concerns that might be efficiently resolved by way of a telephonic interview, the examiner is invited to call applicants' undersigned attorney, Jon M. Isaacson, at **206-332-1102**.

Telephonic interview

On October 6, 2010, applicants' undersigned attorney and Examiner Gebriel conducted a telephonic interview. Applicants' undersigned attorney would like to thank the examiner for granting the interview. During the interview, applicants arguments were discussed with respect to the rejections under 35 U.S.C. § 103(a). The examiner agreed to reconsider the rejections following applicants' formal response. Any further substance of the interview is incorporated into the remarks below.

Rejections under 35 U.S.C. § 103(a)

Claim 1 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Farrington in view of Yamada. Claim 1 is directed to "[a]n electronic camera" which comprises "an exposure control unit." As recited by claim 1, the "exposure control unit is adapted to: integrate the level of light energy sensed during image capture, illuminate said flash unit during said image

capture responsive to the integrated level of light energy reaching a first predetermined level, and extinguish said flash unit and close said scanning aperture shutter unit responsive to the integrated level of light energy reaching a second predetermined level." Thus, the exposure control unit recited by claim 1 "is adapted to… illuminate [a] flash unit during…image capture responsive to the integrated level of light energy reaching a first predetermined level" and "is adapted to… extinguish said flash unit and close [a] scanning aperture shutter unit responsive to the integrated level of light energy reaching a second predetermined level."

The examiner cites to Farrington, col. 7 lines 21-53, as allegedly teaching the exposure control unit recited by claim 1. (Office Action, pages 3-5.) That portion of Farrington discusses an "exposure control electronics module 48 [which] triggers the flash tube 42…at a subject reflectivity related time t_1 to illuminate the scene being photographed with artificial light and then triggers the thyristor 44 at time t_2 through the path 50 to thereby extinguish the light output of the flash tube 42." (Farrington, col. 7, lines 25-31.) Farrington also describes that "[t]he flashtube 42 is fired at full output at the subject distance related time t_1, and is extinguished at the time t_2 which will enable the flashtube 42 to provide a predetermined percentage…of the total scene illumination." (Farrington, col. 7, lines 35-39.) Thus, Farrington teaches illuminating a flash tube at a time t_1 which is "a subject reflectivity related time" and a "subject distance related time" and then extinguishing flash tube at a time t_2 such that the flash tube provides "a predetermined percentage…of the total scene illumination." However, Farrington fails to teach or suggest the following recitations of claim 1: (1) an exposure control unit "adapted to… illuminate [a] flash unit during…image capture *responsive to the integrated level of light energy reaching a first predetermined level*" (emphasis added); and (2) an exposure control unit "adapted to…extinguish said flash unit and close [a] scanning aperture shutter unit *responsive to the integrated level of light energy reaching a second predetermined level*" (emphasis added).

The examiner recognizes that Farrington and Yamada do not disclose an exposure control unit which is "adapted to… illuminate [a] flash unit during…image capture responsive to the integrated level of light energy reaching a first predetermined level" and which is "adapted to…extinguish said flash unit and close [a] scanning aperture shutter unit responsive to the integrated level of light energy reaching a second predetermined level." (Office Action, page 5.)

However, the examiner finds that such an exposure control unit would have been obvious to one of ordinary skill in the art:

> KSR rational hereby is used that using a technique of illuminating a flash light when the integrated level of light reaching a first predetermined level and extinguishing when the integrated level of light reaching a second predetermined level results in a predictable result. Which is solving a improper exposure.
>
> Therefore it would have been obvious to one ordinary skilled in the art at the time the invention was made to the technique Farmington and Yamada with a technique of illuminating a flash light when the integrated level of light reaching a first predetermined level and extinguishing when the integrated level of light reaching a second predetermined level results in a predictable result. Which is solving a improper exposure. The motivation to do so is that to properly expose a foreground and background of an image resulting in properly exposed image.

(Office Action, pages 5-6.) Applicants respectfully submit that the cited art fails to teach or suggest each of the recitations of claim 1 and the examiner has not provided sufficient factual findings to support the rationale used to sustain the legal conclusion of obviousness of claim 1. Thus, the examiner fails to make a *prima facie* case of obviousness. Each of these reasons is discussed in turn.

First, the cited references fail to teach or suggest each of the recitations of claim 1. More specifically, Farrington in view of Yamada fails to teach or suggest an exposure control unit which "is adapted to… illuminate [a] flash unit during…image capture responsive to the integrated level of light energy reaching a first predetermined level" and which "is adapted to… extinguish said flash unit and close [a] scanning aperture shutter unit responsive to the integrated level of light energy reaching a second predetermined level," as recited by claim 1. As described above, Farrington teaches illuminating a flash tube at a time t_1 which is related to the reflectivity of the subject and the distance of the subject, and then extinguishing the flash tube at a time t_2 such that the flash tube provides a predetermined percentage of the total scene illumination. (Farrington, col. 7, lines 25-39.) However, none of these portions of Farrington teaches or suggests that a flash unit is illuminated or extinguished responsive to an integrated level of light reaching a predetermined level. Further, the examiner recognizes that Farrington and Yamada fail to teach such a flash unit. (Office Action, page 5.) Thus, Farrington in view of Yamada fails to teach or

suggest an exposure control unit which "is adapted to… illuminate [a] flash unit during…image capture responsive to the integrated level of light energy reaching a first predetermined level" and which "is adapted to… extinguish said flash unit and close [a] scanning aperture shutter unit responsive to the integrated level of light energy reaching a second predetermined level," as recited by claim 1.

Second, examiner has not provided sufficient factual findings to support the rationale used to sustain the legal conclusion of obviousness of claim 1. "The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious." (MPEP § 2142; citing *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (U.S. 2007).) Although any number of rationales may be used to support a conclusion of obviousness, "[a]ny rationale employed must provide a link between the factual findings and the legal conclusion of obviousness." (*2010 KSR Guidelines Update*, pages 53644-53645.) The Federal Circuit has also stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." (MPEP § 2142; citing *In re Kahn*, 78 U.S.P.Q.2d 1329, 1336 (Fed. Cir. 2006).)

Preliminarily, applicants note that they are unsure as to the meaning of the term "KSR rational" in the Office Action. There, the examiner indicates that "KSR rational is used that using a technique of illuminating a flash light when the integrated level of light reaching a first predetermined level and extinguished when the integrated level of light reaching a second predetermined level results in a predictable result [w]hich is solving an improper exposure." (Office Action, pages 5-6.) In the recently-disseminated *2010 KSR Guidelines Update* ("Examination Guidelines Update: Developments in the Obviousness Inquiry After *KSR v. Teleflex*," 75 Federal Register 169 (1 September 2010), pages 53643-53660), one of the identified rationales for supporting an obviousness determination is "applying a known technique to a known device, method, or product ready for improvement to yield predictable results." Applicants believe that this is what the examiner intended the "KSR rational" to mean. However, should the examiner intend some other meaning, applicants respectfully request that the examiner clarify what is meant by the term "KSR rational" in the Office Action.

The examiner's factual findings fail to support the conclusion that claim 1 merely applies a known technique to a known device, method, or product ready for improvement to yield predictable results. In contrast to the examiner's assertion, illuminating a flash light when an integrated level of light reaches a first predetermined level and extinguishing the flash light when the integrated level of light reaches a second predetermined level has not been shown to have been a known technique. Moreover, the examiner admits that this technique is not taught by either Farrington or Yamada. (Office Action, page 5.) Thus, the examiner's factual findings do not establish that illuminating or extinguishing a flash unit responsive to an integrated level of light reaching a predetermined level was a known technique as of the filing of the present application. In addition, the examiner's factual findings fail to establish what would result from illuminating or extinguishing a flash unit responsive to an integrated level of light reaching a predetermined level. The teachings of Farrington indicate what may happen when a flash unit is illuminated based on the reflectivity and distance of the subject, and what may happen when the flash unit is extinguished to provide a predetermined percentage of total scene illumination. However, no factual finding by the examiner establishes what would happen if a flash unit is illuminated or extinguished responsive to an integrated level of light reaching a predetermined level. Thus, the examiner's conclusion that illuminating and extinguishing a flash unit responsive to an integrated level of light reaching predetermined levels results in "solving a[n] improper exposure" is not supported by factual evidence. Finally, the examiner's factual findings do not establish that the results of illuminating and extinguishing a flash unit responsive to an integrated level of light reaching predetermined levels are predictable. As noted, the examiner's factual findings fail to establish what would result from illuminating and extinguishing a flash unit responsive to an integrated level of light reaching predetermined levels. Because no factual finding establishes what would result from illuminating and extinguishing a flash unit responsive to an integrated level of light reaching predetermined levels, applicants submit that one of ordinary skill in the art would not have been able to predict that illuminating and extinguishing a flash unit responsive to an integrated level of light reaching predetermined levels would result is solving improper exposure. Thus, the examiner's factual findings fail to support any conclusion that illuminating or extinguishing a flash unit responsive

to an integrated level of light reaching a predetermined level was a known technique, that the result of such a technique would have been known, or that one of ordinary skill in the art would have been able to predict such a result. Accordingly, the examiner fails to establish that claim 1 applies a known technique, or that the techniques recited by claim 1 yield predictable results.

For at least the foregoing reasons, applicants submit that the examiner has not established a *prima facie* case of obviousness of claim 1. Accordingly, applicants respectfully request withdrawal of the rejection of claim 1 under 35 U.S.C. § 103(a) as being unpatentable over Farrington in view of Yamada.

Claims 8, 12, 17, 24, and 28-30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Farrington in view of Yamada. Although different in scope from claim 1, claims 8, 12, 17, 24, and 28-30 contain recitations similar to those recitations of claim 1 discussed above. For at least the reasons that the examiner fails to establish a *prima facie* case of obviousness of claim 1, applicants submit that the examiner also fails to establish a *prima facie* case of obviousness of claims 8, 12, 17, 24, and 28-30. Accordingly, applicants request withdrawal of the rejections of claims 8, 12, 17, 24, and 28-30 under 35 U.S.C. § 103(a) as being unpatentable over Farrington in view of Yamada.

Claims 2-5, 7, 9-11, 13-16, 18-21, 23, and 25-27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Farrington in view of Yamada. Claims 2-5, 7, 9-11, 13-16, 18-21, 23, and 25-27 depend, directly or indirectly, from claims 1, 8, 12, 17, and 24. Inasmuch as the examiner fails to establish a *prima facie* case of obviousness of claims 1, 8, 12, 17, and 24, applicants submit that the examiner also fails to establish a *prima facie* case of obviousness of claims 2-5, 7, 9-11, 13-16, 18-21, 23, and 25-27. Accordingly, applicants request withdrawal of the rejections of claims 2-5, 7, 9-11, 13-16, 18-21, 23, and 25-27 under 35 U.S.C. § 103(a) as being unpatentable over Farrington in view of Yamada.

Claims 6 and 22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Farrington in view of Yamada, and further in view of Omura. Claims 6 and 22 depend from claims 1 and 17. Applicants submit that Omura and the examiner's findings regarding Omura fail to cure the deficiencies in the rejections of claims 1 and 17 discussed above. Inasmuch as claims 6 and 22 depend from claims 1 and 17, and the examiner fails to establish a *prima facie*

case of obviousness of claims 1 and 17, applicants submit that the examiner also fails to establish a *prima facie* case of obviousness of claims 6 and 22. Accordingly, applicants request withdrawal of the rejections of claims 6 and 22 under 35 U.S.C. § 103(a) as being unpatentable over Farrington in view of Yamada, and further in view of Omura.

Conclusion

Applicants believe that the present remarks are responsive to each of the points raised by the examiner in the Office Action, and submit that claims 1-30 of the application are in condition for allowance. Favorable consideration and passage to issue of the application at the examiner's earliest convenience is earnestly solicited.

Date: December 3, 2010

/Jon M. Isaacson/
Jon M. Isaacson
Registration No. 60,436

Woodcock Washburn LLP
Cira Centre
2929 Arch Street, 12th Floor
Philadelphia, PA 19104-2891
Telephone: (215) 568-3100
Facsimile: (215) 568-3439